

NEBRASKA DEPARTMENT
OF INSURANCE

MAY 08 2003

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	
)	FINDINGS OF FACT,
PETITIONER,)	CONCLUSIONS OF LAW,
)	RECOMMENDED ORDER AND
VS.)	ORDER
CHARLES D. DAVIS)	
)	CAUSE NO. A-1490
RESPONDENT)	
)	

This matter came on for hearing on the 30th day of April 2003, before Eric Dunning, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Michael Boyd. Charles D. Davis ("Respondent") was not present and was not represented by an attorney. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Evidence was introduced, and the matter was taken under advisement. As a result of the hearing, the Hearing Officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent is a licensed resident Nebraska insurance producer whose current registered address with the Department of Insurance is National Health Insurance Company, 13520 Discovery Drive #206, Omaha, Nebraska, 68137, as evidenced by Exhibit 2, and whose registered home address is 1021 West "E" Street, North Platte, Nebraska 69101, as evidenced by Exhibit 3.

2. The Department is the agency of the State of Nebraska charged with licensing insurance agents and brokers.

3. The Department filed a Petition and Notice of Hearing on or about March 3, 2003, which were served upon the Respondent by mailing the same to his business address of record by certified mail, return receipt requested. On or about March 10, 2003 the letter was returned to the Dpartment by the United States Postal Service as "Not Deliverable As Addressed, Attempted Not Known", as evidenced by Exhibit 3. On or about March 10, 2003 the Department served a copy of the Petition and Notice of Hearing by mailing a copy to Respondent's registered home address by certified mail, return receipt requested. On or about March 31, 2003 the certified letter was returned to the Department as "Unclaimed", as evidenced by Exhibit 3. On or about April 1, 2003, Department served a copy of the Peititon and Notice of Hearing by mailing a copy to Respondent's registered home address by First Class United States Mail which had not been returned as of April 28, 2003, as evidenced by Exhibit 3.

4. The Department's Petition alleged that Respondent violated Neb.Rev.Stat. §44-4059(1)(g) which provides that the Director may revoke or suspend a producer's license and/or impose a fine if the licensee is found to have committed any insurance unfair trade practice as Respondent had violated Neb.Rev.Stat. § 44-1524. The Petition further alleged that the Respondent violated Neb.Rev.Stat. §44-1524 which provides, "It shall be an unfair trade practice in the business of insurance for any insurer to commit any act or practice defined in section 44-1525 if the act or practice (1) is committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act or any rule or regulation adopted pursuant to the act or (2) has been committed with such frequency as to indicate a general

business practice to engage in that type of conduct” as Respondent had violated Neb.Rev.Stat. § 44-1525 (11). The Petition further alleged Respondent violated Neb.Rev.Stat. §44-1525(11) which provides, “Any of the following acts or practices, if committed in violation of section 44-1524, shall be unfair trade practices in the business of insurance: (11) Failing of any insurer, upon receipt of a written inquiry from the department, to respond to such inquiry or request additional reasonable time to respond within fifteen working days” a result of the following conduct:

a. On or about July 1, 2002, the Nebraska Department of Insurance sent a certified letter, return receipt requested, to Respondent at his registered address requesting Respondent explain his involvement in the solicitation of a health insurance application from Diana Nowatzke. The Respondent was informed that a response was required within 15 working days. Respondent failed to respond in writing to the Department of Insurance within the time period requested.

b. On or about July 29, 2002, the Nebraska Department of Insurance sent a second certified letter requesting a response from Respondent regarding the same issues presented in the letter of July 1, 2002. On or about August 14, 2002, the certified letter was returned to the Department of Insurance by the United States Postal Service, stating the letter was “Unclaimed”.

c. On or about August 8, 2002, the Nebraska Department of Insurance sent a third certified letter to Respondent, return receipt requested, stating that a reply to earlier correspondence has not been received and that an immediate and complete response was required. Additionally, this letter requested Respondent to address the Nowatzke’s complaint that someone had returned their initial \$200 premium check for health insurance uncashed by leaving it at their place of business with their 10-year-old son with no explanation to the Nowatzkes. On or about August 25, 2002, the certified letter was returned to the Department of Insurance by the United States Postal Service, stating the letter was “Unclaimed”.

d. On or about November 18, 2002, the Nebraska Department of Insurance sent a fourth letter, by regular mail, to the Respondent, along with copies of the 3 previously mailed letters, requesting a complete response to the Department of Insurance by December 15, 2002. Presently, Respondent has failed to respond to the Department’s repeated requests for information in this matter.

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to Neb.Rev.Stat. § 44-101.01, § 44-4047 et seq.

2. The Department has personal jurisdiction over Respondent.

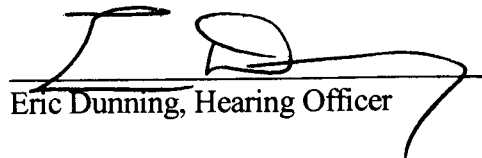
3. The Respondent violated Neb.Rev.Stat. §§ 44-4059 (1) (g), 44-1524, and 44-1525 (11).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that the Respondent shall pay an administrative fine of \$2000 within thirty (30) days of the date the Director of Insurance signs this Order. The Nebraska Department of Insurance shall retain jurisdiction of this matter for the purpose of enabling the Respondent or the Department to make application for such further orders as may be necessary.

Dated this 6th day of May 2003.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


Eric Dunning, Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the

official and final Order of this Department in the matter of State of Nebraska Department of Insurance v. Charles D. Davis, Cause No. A-1490.

Dated this 9th day of May 2003.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Respondent by mailing a copy to Respondent at National Health Insurance Company, 13520 Discovery Drive #206, Omaha, Nebraska, 68137 by certified mail, return receipt requested, and by First Class United States Mail to 1021 West "E" Street, North Platte, Nebraska 69101 on this 9th day of May 2003.

